IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Martin Weel
Serial No. 10/840,110
Filed: 05/05/2004
For: **SYSTEM AND METHOD FOR SHARING PLAYLISTS**

Examiner: Oanh L. Duong
Art Unit: 2455

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

An **APPEAL BRIEF** is filed herewith. Appellant encloses a payment in the amount of $540.00 as required by 37 C.F.R. § 41.20(b)(2). Appellant also encloses a payment in the amount of $130.00 to cover the fee associated with a one-month Extension of Time. If any additional fees are required in association with this appeal brief, the Director is hereby authorized to charge them to Deposit Account 50-1732, and consider this a petition therefor.

APPEAL BRIEF

(1) REAL PARTY IN INTEREST

The real party in interest is the assignee of record, i.e., ConPact, Inc., of 7011 Fayetteville Road, Suite 210, Durham, North Carolina 27713, a Delaware corporation.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences to the best of Appellant's knowledge.

(3) STATUS OF CLAIMS

Claims 61-64, 66-70, and 72-92 were rejected with the rejection made final on August 19, 2009.

Claims 1-60, 65, 71, and 93-108 were previously cancelled.

Claims 61-64, 66-70, and 72-92 are pending and are the subject of this appeal.

(4) STATUS OF AMENDMENTS

All amendments have been entered to the best of Appellant's knowledge. According to the Advisory Action mailed November 3, 2009 (hereinafter "Advisory Action"), the amendments filed in Appellant's "Response to the Final Office Action Mailed August 19, 2009," which was submitted on October 19, 2009, were entered. No amendments have been filed after the Advisory Action mailed November 3, 2009.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

In the following summary, Appellant has noted where in the Specification certain subject matter exists. Appellant wishes to point out that these citations are for demonstrative purposes only and that the Specification may include additional discussion of the various elements, citations to which are not pointed out below. Thus, the noted citations are in no way intended to limit the scope of the pending claims.

Independent claim 61 recites a computer-implemented method comprising (see Figure 1, elements 11 and 17; see also Specification, paragraphs 0076-0080):

comparing, by a processing device, each of a plurality of user profiles with a target user profile of a first user associated with a media player device (see Figure 6, element 63; see also Specification, paragraph 0102);

selecting, by the processing device, a matching user profile from the plurality of user profiles (see Figure 6, element 65; see also Specification, paragraph 0103);

selecting a playlist of a matching user associated with the matching user profile (see Figure 6, element 67; see also Specification, paragraph 0105); and

delivering the playlist to the media player device (see Figure 6, element 67; see also Specification, paragraph 0105).

Dependent claim 63 recites wherein a plurality of playlists including the playlist are stored by at least one server, each of the plurality of playlists is a playlist of one of a plurality of users including the matching user, and each of the plurality of users is associated with one of the plurality of user profiles (see Figure 3, elements 31-34; see also Specification, paragraphs 0090-0092).

Dependent claim 74 recites further comprising filtering the playlist to remove at least one item that is not compatible with a location of the media player device (see Specification, paragraph 0046).

Independent claim 78 recites a media player device comprising (see Figure 1, element 17; see also Specification, paragraph 0080):

a communications interface communicatively coupling the media player device to a network (see Figure 1, elements 17 and 12; see also Specification, paragraphs 0020, 0077, and 0078); and

a control system associated with the communications interface and adapted to (see Figure 1, element 17; see also Specification, paragraphs 0018-0020):

compare each of a plurality of user profiles with a target user profile of a first user associated with the media player device (see Figure 6, element 63; see also Specification, paragraph 0102);

select a matching user profile from the plurality of user profiles (see Figure 6, element 65; see also Specification, paragraph 0103);

request delivery of a playlist of a matching user associated with the matching user profile from a server storing the playlist to the media player device (see Figure 4, element 47; see also Specification, paragraph 0097); and

play at a least a portion of a song identified on the playlist (see Specification, paragraph 0016).

Independent claim 89 recites a server comprising (see Figure 1, elements 11 and 17; see also Specification, paragraphs 0076-0080):

a communications interface communicatively coupling the server to a media player device via a network (see Figure 1, elements 11-13 and 17; see also Specification, paragraphs 0024, 0028, 0077, and 0078); and

a control system associated with the communications interface and adapted to (see Figure 1, element 11; see also Specification, paragraph 0090):

store a plurality of playlists each associated with one of a plurality of users (see Figure 3, elements 31-33; see also Specification, paragraphs 0089 and 0090);

compare each of a plurality of user profiles of the plurality of users with a target user profile of a first user of the media player device (see Figure 3, element 33; see also Specification, paragraph 0090);

select a matching user profile from the plurality of user profiles, the matching user profile associated with a second user from the plurality of users (see Figure 3, element 34; see also Specification, paragraphs 0090-0092);

effect selection of a playlist of the second user from the plurality of playlists for delivery to the media player device (see Figure 3, element 34; see also Specification, paragraphs 0090-0092); and

communicate the playlist of the second user to the media player device (see Figure 3, element 34; see also Specification, paragraph 0093).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 61-64, 66-70, 75, 77-81, 85, 87-90, and 92 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,041,311 to Chislenko et al. (hereinafter "Chislenko") in view of U.S. Patent Application Publication No. 2002/0168938 A1 to Chang (hereinafter "Chang").

B. Whether claims 72, 82, and 91 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Chislenko in view of Chang and in further view of U.S. Patent Application Publication No. 2005/0165888 A1 to Elliott (hereinafter "Elliott").

C. Whether claims 73 and 83 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Chislenko in view of Chang and in further view of U.S. Patent Application Publication No. 2004/0078382 A1 to Mercer et al. (hereinafter "Mercer").

D. Whether claims 74 and 84 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Chislenko in view of U.S. Patent Application Publication No. 2004/0162830 A1 to Shirwadkar et al. (hereinafter "Shirwadkar").

E. Whether claims 76 and 86 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Chislenko in view of Chang and in further view of U.S. Patent Application Publication No. 2006/0256669 A1 to Sakuma et al. (hereinafter "Sakuma").

(7) ARGUMENT

A. Introduction

The Patent Office has not shown where all the elements of the pending claims are shown with sufficient particularity to sustain an obviousness rejection. For example, with respect to independent claims 61, 78, and 89, neither Chislenko nor Chang teaches or suggests selecting a matching user profile from a plurality of user profiles, selecting a playlist of a matching user associated with the matching user profile, and delivering the playlist to a media player device. Appellant requests that the Board reverse the Examiner and instruct the Examiner to allow the claims for these reasons along with the reasons below.

B. Legal Standards For Establishing Obviousness

Section 103(a) of the Patent Act provides the statutory basis for an obviousness rejection and reads as follows:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Courts have interpreted 35 U.S.C. § 103(a) as a question of law based on underlying facts. As the Federal Circuit stated:

> Obviousness is ultimately a determination of law based on underlying determinations of fact. These underlying factual determinations include: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) the extent of any proffered objective indicia of nonobviousness.

Monarch Knitting Mach. Corp. v. Sulzer Morat GmBH, 45 U.S.P.Q.2d (BNA) 1977, 1981 (Fed. Cir. 1998) (internal citations omitted).

Once the scope of the prior art is ascertained, the content of the prior art must be properly combined. Initially, the Patent Office must show that there is a suggestion to combine the references. *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999). Even if the Patent Office is able to articulate and support a suggestion to combine the references, it is impermissible to pick and choose elements from the prior art while using the application as a template. *In re Fine*, 837

F.3d 1071 (Fed. Cir. 1988). To reconstruct the invention by such selective extraction constitutes impermissible hindsight. *In re Gorman*, 933 F.2d 982 (Fed. Cir. 1991). After the combination has been made, for a *prima facie* case of obviousness, the combination must still teach or fairly suggest all of the claim elements. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. (BNA) 580 (CCPA 1974).

Some elements may be inherent within the reference. "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.'" *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (quoting *Cont'l Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991)). "The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Ibid.* (citation and quotation omitted). Thus, the possibility that an element may be derived from the reference is insufficient to establish that said element is inherent to the reference.

Whether an element is implicitly or explicitly taught by a reference or combination of references is open to interpretation. While the Patent Office is entitled to give claim terms their broadest reasonable interpretation, this interpretation is limited by a number of factors. First, the interpretation must be consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); M.P.E.P. § 2111. Second, the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, (Fed. Cir. 1999); M.P.E.P. § 2111. Finally, the interpretation must be reasonable. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004); M.P.E.P. § 2111.01. This means that the words of the claim must be given their plain meaning unless Appellant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989).

If a claim element is missing after the combination is made, then the combination does not render obvious the claimed invention, and the claims are allowable. As stated by the Federal Circuit, "[if] the PTO fails to meet this burden, then the Appellant is entitled to the patent." *In re Glaug*, 283 F.3d 1335, 1338 (Fed. Cir. 2002).

C. Claims 61-64, 66-70, 75, 77-81, 85, 87-90, And 92 Are Patentable Over Chislenko In View Of Chang

Claims 61-64, 66-70, 75, 77-81, 85, 87-90, and 92 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chislenko in view of Chang. Appellant respectfully traverses. When determining whether a claim is obvious, an Examiner must make "a searching comparison of the claimed invention—*including all its limitations*—with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, "obviousness requires a suggestion of all limitations in a claim." *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, "*there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418, 82 U.S.P.Q.2d (BNA) 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).

Claim 61

Chislenko discloses a system wherein items in a category, or "domain," may be recommended to a user of the system based on similarities between the rating of such items by the respective user and the rating of such items by a group of "neighboring users" of the system (Chislenko, col. 3, ll. 6-14; col. 8, ll. 1-18; col. 9, ll. 39-48). Chislenko discloses that the group of neighboring users of the system may be determined, at least in part, by "comparing that user's profile with the profile of every other user of the system" (*Id.* at col. 5, ll. 51-55). Appellant notes, however, that the profiles in Chislenko are compared not to select a user from which the system can obtain a playlist, but to determine which other users rate items similarly, i.e., to determine the group of "neighboring users" (*Id.* at col. 8, ll. 1-18). Appellant's claimed invention, in contrast, compares profiles to determine a "matching user profile" and to select a playlist of the matching user. For example, claim 61 recites "*selecting, by the processing device, a matching user profile from the plurality of user profiles.*" Chislenko fails to teach or suggest selecting a matching user profile from a plurality of user profiles. The Patent Office asserts that this limitation is disclosed at column 8, lines 1-2 of Chislenko (Advisory Action, p. 2). Appellant respectfully disagrees. In context, the referenced portion of Chislenko states:

> Regardless of the method used to generate them, or whether the additional information contained in the profiles is used, the similarity factors are used to select a plurality of users that have a high degree of correlation to a user (step 106). These users are called the user's "neighboring users." (Chislenko, col. 7, l. 66-col. 8, l. 3)

Chislenko discloses that a plurality of users who have similar interests are selected. No "matching user profile" is selected. This is because Chislenko desires to determine which items have been highly rated by a group of "neighboring users," not to locate a particular matching user who may have a playlist of interest to a target user (see col. 10, ll. 1-6 of Chislenko).

Chang relates to coordinated and synchronized music playback among peer devices (Chang, Abstract). Chang discloses a system wherein a user profile is a list of songs (*Id.* at para. 0021). If a list of songs of one user is sufficiently similar to a list of songs of another user, the system disclosed in Chang may determine that a profile match exists (*Id.* at paras. 0021 and 0024). Thus, Appellant notes that Chang, like Chislenko, fails to teach or suggest "*selecting, by the processing device, a matching user profile from the plurality of user profiles*" because Chang discloses to compare the list of songs of one user to the list of songs of another user. There is no "*plurality of user profiles*" as recited in Appellant's claim 61.

Chislenko also fails to teach or suggest "*selecting a playlist of a matching user associated with the matching user profile*," as recited in claim 61. The Patent Office concedes this deficiency of Chislenko, but asserts that Chang discloses such feature (Advisory Action, pp. 2-3). Appellant respectfully disagrees.

Chang discloses to compare two playlists (Chang, para. 24). Chang does not "*select*" a playlist of a matching user. Rather, Chang compares the playlist of one user to the playlist of a second user. Thus, neither Chislenko nor Chang discloses "*selecting a playlist of a matching user associated with the matching user profile*," as recited in Appellant's claim 61.

Considering the two recited limitations together, it becomes even more evident that neither Chislenko nor Chang, either alone or in combination, discloses such features. Appellant's claim 61 recites:

> *selecting, by the processing device, a matching user profile from the plurality of user profiles;*
> *selecting a playlist of a matching user associated with the matching user profile;*

Neither Chang nor Chislenko, as discussed above, discloses selecting a matching user profile from a plurality of user profiles. Since neither reference discloses selecting a matching user profile, it follows that neither reference can disclose selecting a playlist of a matching user associated with the matching user profile. Moreover, Appellant notes that claim 61 recites 1) *a matching user profile* and 2) *a playlist of a matching user associated with the matching user profile*. In contrast, Chang does not disclose a separate profile and a separate playlist, as recited in Appellant's claim 61; rather, Chang discloses a playlist that is referred to as a profile. Because the profile is the list of songs, Chang cannot disclose first selecting a matching user profile from a plurality of user profiles, and then selecting a playlist of a matching user.

Appellant's claim 61 further recites "*delivering the playlist to the media player device*." The Patent Office asserts that Chislenko discloses this feature (Advisory Action, p. 2). Appellant respectfully disagrees. Chislenko discloses that a recommended list of "hit songs on an album" can be displayed to a user (col. 10, ll. 15-32). Even assuming, *arguendo*, that displaying a list of hit songs can be considered the delivery of a playlist, Appellant notes that the "hit songs" are songs that are recommended based on the ratings of the neighboring users (see col. 10, ll. 3-6). Nowhere does Chislenko suggest that the "hit songs" are a playlist of a matching user associated with a matching user profile, as recited in Appellant's claim 61.

For at least the foregoing reasons, Appellant submits that claim 61 is allowable over the cited references.

Claim 78

Claim 78 contains similar limitations to those discussed herein with regard to claim 61, and is therefore allowable for at least the same reasons. However, claim 78 differs from claim 61 in at least one notable respect, wherein claim 78 recites a control system that is adapted to "*request delivery of a playlist of a matching user associated with the matching user profile from a server storing the playlist to the media player device*" (emphasis added). While Chislenko discloses that recommended items may be "displayed to the user" (Chislenko, col. 10, ll. 15-16), Chislenko fails to teach or suggest a server that stores playlists. Chang discloses the use of "playback/listening" apparatus in a wireless ad hoc network, and thus similarly fails to teach or suggest the storage of a playlist on a server. For at least this reason, as well as those discussed

herein with respect to claim 61, Appellant submits that claim 78 is allowable over the cited references.

Claim 89

Claim 89 contains similar limitations to those discussed herein with regard to claim 61, and is therefore allowable for at least the same reasons. However, claim 89 differs from claim 61 in several notable respects. First, claim 89 recites a *server*. As discussed herein with regard to claim 78, Chislenko fails to teach or suggest a server that stores playlists. Rather, Chislenko discloses that recommended items may be "displayed to the user" (Chislenko, col. 10, ll. 15-16). Chang discloses the use of "playback/listening" apparatus in a wireless ad hoc network, and thus similarly fails to teach or suggest the storage of a playlist on a server.

Moreover, claim 89 recites that the server "*store[s] a plurality of playlists each associated with one of a plurality of users.*" Nowhere does Chislenko or Chang teach or suggest the storage of a plurality of playlists on a server, nor a plurality of playlists each associated with one of a plurality of users. The Patent Office asserts such feature is disclosed at column 19, lines 8-15 of Chislenko (Final Office Action mailed August 19, 2009, p. 6). Appellant respectfully disagrees, and notes that the referenced portion of Chislenko discloses that user profiles may be stored in a memory. Nowhere does Chislenko disclose that user profiles are playlists, nor does Chislenko appear to indicate that the memory is on a server.

Claim 89 also recites "*effect selection of a playlist of the second user from the plurality of playlists for delivery to the media player device.*" Nowhere does Chislenko or Chang teach or suggest the selection of a playlist from a plurality of playlists that are stored on a server.

For at least these reasons, as well as those discussed herein with respect to claim 61, Appellant submits that claim 89 is allowable over the cited references.

Claim 63

Claim 63 recites "*a plurality of playlists including the playlist are stored by at least one server, each of the plurality of playlists is a playlist of one of a plurality of users including the matching user, and each of the plurality of users is associated with one of the plurality of user profiles.*" Nowhere does Chislenko or Chang teach or suggest the storage of a plurality of playlists on a server, nor a plurality of playlists each associated with one of a plurality of users.

The Patent Office asserts such feature is disclosed at column 11, lines 25-29 of Chislenko (Final Office Action mailed August 19, 2009, p. 7). Appellant respectfully disagrees. The referenced portion of Chislenko indicates that a "recommendation list will be generated." Nowhere does the referenced portion indicate that the recommendation list comprises a "*plurality of playlists,*" or that the recommendation list is "*a playlist of one of a plurality of users,*" or even that the recommendation list is "*stored on at least one server.*" Thus, Appellant submits that claim 63 is allowable over the cited references.

Claims 62-64, 66-70, 75, 77, 79-81, 85, 87, 88, 90, and 92 depend directly or indirectly from claims 61, 78, and 89. As such, claims 62-64, 66-70, 75, 77, 79-81, 85, 87, 88, 90, and 92 are allowable for at least the same reasons set forth above with respect to claims 61, 78, and 89. Therefore, Appellant respectfully requests that the rejection be withdrawn. However, Appellant reserves the right to further address the rejection of claims 62-64, 66-70, 75, 77, 79-81, 85, 87, 88, 90, and 92 in the future, if needed.

D. Claims 72, 82, And 91 Are Patentable Over Chislenko In View Of Chang And Elliott

Claims 72, 82, and 91 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chislenko in view of Chang and Elliott. Appellant respectfully traverses. The standards for obviousness are set forth above.

Claims 72, 82, and 91 depend directly or indirectly from claims 61, 78, and 89, respectively. As such, claims 72, 82, and 91 are allowable for at least the same reasons set forth above with respect to claims 61, 78, and 89. However, Appellant reserves the right to further address the rejection of claims 72, 82, and 91 in the future, if needed.

E. Claims 73 And 83 Are Patentable Over Chislenko In View Of Chang And Mercer

Claims 73 and 83 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chislenko in view of Chang and Mercer. Appellant respectfully traverses. The standards for obviousness are set forth above.

Claims 73 and 83 depend indirectly from claims 61 and 78, respectively. As such, claims 73 and 83 are allowable for at least the same reasons set forth above with respect to claims 61 and 78. However, Appellant reserves the right to further address the rejection of claims 73 and 83 in the future, if needed.

F. Claims 74 And 84 Are Patentable Over Chislenko In View Of Shirwadkar

Claims 74 and 84 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chislenko in view of Shirwadkar. Appellant respectfully traverses. The standards for obviousness are set forth above.

Appellant's claim 74 recites "*filtering the playlist to remove at least one item that is not compatible with a location of the media player device.*" The Patent Office asserts that paragraph 0050 of Shirwadkar discloses this feature (Final Office Action mailed August 19, 2009, p. 10). Appellant respectfully disagrees. Paragraph 0050 of Shirwadkar states:

> [0050] FIG. 5 consists of the steps performed by the dynamic and Peer-to-Peer recommendation system. In step 501, the search string is retrieved from the mobile device and in step 502, the location of the mobile device is detected. In step 503, list of all users in the current location is retrieved from the location server. Each user profile is then checked for recommendations' related privacy preferences. The users interested and having the relevant expertise are prompted to input their recommendations in step 504. The archived recommendations are retrieved and then aggregated with the real time recommendations in step 505. In step 506, the aggregated recommendations are combined with the search results. The search results are displayed in step 507.

Appellant submits that paragraph 0050 of Shirwadkar discloses an ability to determine the location of a mobile device, and from such location identify a number of users at that location. Moreover, those users may be prompted to provide a recommendation. Nowhere does the referenced paragraph teach or suggest filtering a playlist to remove an item that is not compatible with a location of the media player device. Thus, Appellant submits that claim 74 is allowable over the cited references.

Claim 84 depends from claim 78, and thus is allowable for at least the same reasons set forth above with respect to claim 78. However, Appellant reserves the right to further address the rejection of claim 84 in the future, if needed.

G. Claims 76 And 86 Are Patentable Over Chislenko In View Of Chang And Sakuma

Claims 76 and 86 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chislenko in view of Chang and Sakuma. Appellant respectfully traverses. The standards for obviousness are set forth above.

Claims 76 and 86 depend directly or indirectly from claims 61 and 78, respectively. As such, claims 76 and 86 are allowable for at least the same reasons set forth above with respect to claims 61 and 78. However, Appellant reserves the right to further address the rejection of claims 76 and 86 in the future, if needed.

H. Conclusion

For the reasons set forth above, Appellant requests that the Board reverse the Examiner and instruct the Examiner to allow the claims.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By: 

Eric P. Jensen
Registration No. 37,647
100 Regency Forest Drive, Suite 160
Cary, NC 27518
Telephone: (919) 238-2300

Date: February 19, 2010
Attorney Docket: 1116-065

(8) CLAIMS APPENDIX

1-60. (Cancelled).

61. A computer-implemented method comprising:

comparing, by a processing device, each of a plurality of user profiles with a target user profile of a first user associated with a media player device;

selecting, by the processing device, a matching user profile from the plurality of user profiles;

selecting a playlist of a matching user associated with the matching user profile; and

delivering the playlist to the media player device.

62. The method of claim 61 wherein the matching user profile is one of the plurality of user profiles most similar to the target user profile.

63. The method of claim 61 wherein a plurality of playlists including the playlist are stored by at least one server, each of the plurality of playlists is a playlist of one of a plurality of users including the matching user, and each of the plurality of users is associated with one of the plurality of user profiles.

64. The method of claim 63wherein the step of comparing is performed by the at least one server storing the plurality of playlists.

65. (Cancelled).

66. The method of claim 63 wherein the step of comparing is performed by the media player device.

67. The method of claim 66 further comprising requesting delivery of the playlist from the at least one server to the media player device.

68. The method of claim 63 wherein the at least one server comprises a central server.

69. The method of claim 63 wherein the at least one server comprises a plurality of peer media player devices forming a Peer-to-Peer (P2P) network.

70. The method of claim 69 wherein comparing each of the plurality of user profiles with the target user profile of the first user associated with the media player device comprises, at each peer media player device from the plurality of peer media player devices, comparing a one of the plurality of user profiles associated with a user of the peer media player device and the target user profile.

71. (Cancelled).

72. The method of claim 63 further comprising automatically updating the playlist at the media player device in response to a change made to the playlist by the matching user.

73. The method of claim 63 further comprising filtering the playlist to remove at least one item that is not compatible with the media player device.

74. The method of claim 63 further comprising filtering the playlist to remove at least one item that is not compatible with a location of the media player device.

75. The method of claim 63 further comprising editing the playlist at the media player device to further include items played in excess of a threshold rate at the media player device.

76. The method of claim 63 further comprising editing the playlist at the media player device to remove items played less than a threshold rate at the media player device.

77. The method of claim 61 wherein the media player device is a dedicated media player device.

78. A media player device comprising:

a communications interface communicatively coupling the media player device to a network; and

a control system associated with the communications interface and adapted to:

compare each of a plurality of user profiles with a target user profile of a first user associated with the media player device;

select a matching user profile from the plurality of user profiles;

request delivery of a playlist of a matching user associated with the matching user profile from a server storing the playlist to the media player device; and

play at a least a portion of a song identified on the playlist.

79. The media player device of claim 78 wherein the matching user profile is one of the plurality of user profiles most similar to the target user profile.

80. The media player device of claim 78 wherein the server is a central server.

81. The media player device of claim 78 wherein the server is one of a plurality of peer media player devices forming a Peer-to-Peer (P2P) network.

82. The media player device of claim 78 wherein the playlist is automatically updated at the media player device in response to a change made to the playlist by the matching user.

83. The media player device of claim 79 wherein the control system is further adapted to filter the playlist to remove at least one item that is not compatible with the media player device.

84. The media player device of claim 78 wherein the control system is further adapted to filter the playlist to remove at least one item that is not compatible with a location of the media player device.

85. The media player device of claim 78 wherein the control system is further adapted to edit the playlist at the media player device to further include items played in excess of a threshold rate at the media player device.

86. The media player device of claim 78 wherein the control system is further adapted to edit the playlist at the media player device to remove items played less than a threshold rate at the media player device.

87. The media player device of claim 78 wherein the media player device is a dedicated media player device.

88. The media player device of claim 78 wherein a plurality of playlists including the playlist are stored by at least one server including the server, each of the plurality of playlists is a playlist of one of a plurality of users including the matching user, and each of the plurality of users is associated with one of the plurality of user profiles.

89. A server comprising:

a communications interface communicatively coupling the server to a media player device via a network; and

a control system associated with the communications interface and adapted to:

store a plurality of playlists each associated with one of a plurality of users;

compare each of a plurality of user profiles of the plurality of users with a target user profile of a first user of the media player device;

select a matching user profile from the plurality of user profiles, the matching user profile associated with a second user from the plurality of users;

effect selection of a playlist of the second user from the plurality of playlists for delivery to the media player device; and

communicate the playlist of the second user to the media player device.

90. The server of claim 89 wherein the matching user profile is one of the plurality of user profiles most similar to the target user profile.

91. The server of claim 89 wherein the control system is further adapted to automatically update the playlist at the media player device in response to a change made to the playlist by the second user.

92. The server of claim 89 wherein the media player device is a dedicated media player device.

93-108. (Cancelled).

(9) EVIDENCE APPENDIX

The Appellant relies on no evidence, thus this appendix is not applicable.

(10) RELATED PROCEEDINGS APPENDIX

As there are no related proceedings, this appendix is not applicable.